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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**STEEL TECHNOLOGY, LLC**, an Oregon  
limited liability company,

Plaintiff,

v.

**808 HI-DR8, LLC**, a Hawaii limited  
liability company,

Defendant.

Case No. 3:15-cv-00058-AA

**FIRST AMENDED COMPLAINT FOR  
PATENT AND TRADEMARK  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

For its First Amended Complaint, Plaintiff Steel Technology, LLC dba Hydro Flask (“Hydro Flask”) alleges against Defendant 808 HI-DR8, LLC (“808 HI-DR8” or “Defendant”) as follows:

**NATURE OF THE CASE**

1. This is a civil action for patent infringement under the patent laws of the United States, 35 U.S.C. §§ 1 et seq., specifically under 35 U.S.C. §§ 271 and 281, violations of the Lanham Act, 15 U.S.C. §§ 1114(1) and 1125(a), and Oregon and Hawaii common law trademark infringement and unfair competition.

**THE PARTIES**

2. Hydro Flask is an Oregon limited liability company, having a principal place of business at 561 N.W. York Drive, Bend, Oregon 97701. Hydro Flask sells bottles and bottle accessories, including double-walled, vacuum-insulated bottles and lids.

3. Upon information and belief, Defendant is a Hawaii limited liability company having a principal place of business at 1200 Queen Emma Street, Suite 3001, Honolulu, Hawaii 96813 and a registered agent at 94-1017 Kahuamoku Street, Apartment 7, Waipahu, Hawaii 96797.

**JURISDICTION AND VENUE**

4. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338, because of the claim under 35 U.S.C. § 271 for patent infringement, and under 28 U.S.C. §§ 1331 and 1338, as well as 15 U.S.C. § 1121(a), because of the claims under 15 U.S.C. §§ 1114(1) and 1125(a) for federal trademark infringement and unfair competition.

5. This Court has supplemental jurisdiction over Hydro Flask's state law claims under 28 U.S.C. § 1367 because these claims are so related to the claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative facts.


6. This Court has personal jurisdiction over Defendant because, upon information and belief, Defendant's acts of infringement that led to the present suit were committed in the District of Oregon, within the jurisdiction of this Court. Upon information and belief, Defendant, directly and/or through third parties, has made, used, sold, and/or offered for sale infringing products in the District of Oregon and/or have placed infringing products into the stream of commerce through established distribution channels with the expectation that such products will be purchased by residents of this District. Upon information and belief, Defendant has advertised, offered for sale, and/or marketed its goods under the infringing marks in this State.

7. Venue is proper in this judicial district under 28 U.S.C. § 1391 because Defendant, upon information and belief, may be found or transacts business in this district and under 28 U.S.C. § 1400 because Defendant, upon information and belief, has committed acts of patent infringement in Oregon.

#### **HYDRO FLASK'S PATENT**

8. U.S. Design Patent No. D704,986 entitled Flask Lid (the '986 patent or "Hydro Flask Straw Lid") was issued on May 20, 2014. Hydro Flask has owned the '986 patent throughout the period of Defendant's infringing acts, and still owns the '986 patent. The '986 patent claims the ornamental design for a flask lid. A copy of the '986 patent is attached as Exhibit M.


#### **HYDRO FLASK'S MARKS**

9. Hydro Flask owns U.S. Trademark Reg. No. 3,834,826 (the '826 Registration) for the mark  on the insulated bottles that it sells. The '826 registration was issued on August 17, 2010. The '826 registration is attached as Exhibit N.

10. Hydro Flask owns U.S. Trademark Reg. No. 4,055,784 (the ‘784 Registration) for the mark HYDRO FLASK on the insulated bottles that it sells. The ‘784 registration was issued on August 30, 2011. The ‘784 registration is attached as Exhibit O.

11. Hydro Flask owns U.S. Trademark Reg. No. 4,113,155 (the ‘155 Registration) for the mark HYDRATE YOUR LIFE on the insulated bottles that it sells. The ‘155 registration was issued on March 13, 2012. The ‘155 registration is attached as Exhibit P.

12. Hydro Flask owns pending U.S. Trademark Reg. Serial No. 86/288,877 (the ‘877 Application) for the product configuration of a rounded body and a flip-top disposed on top of the rounded body on the insulated bottles that it sells (the “Hydro Flask Flip Lid”). Attached as Exhibit Q is a printout from the U.S. Patent and Trademark Office website showing the status of the ‘877 Application.

13. Since at least prior to the acts alleged herein, Hydro Flask has continuously sold its insulated vacuum bottles and lids prominently designated under its  HYDRO FLASK, and HYDRATE YOUR LIFE marks, and its Hydro Flask Flip Lid product configuration mark (collectively the “Hydro Flask Marks”) throughout the United States.

14. Hydro Flask provides notice of registration of its products under the Hydro Flask Marks by displaying the letter “R” enclosed within a circle, in compliance with 15 U.S.C. § 1111.

15. Hydro Flask’s marketing and sales activities related to its insulated vacuum bottles and bottle lids under the Hydro Flask Marks, at least in the State of Oregon and in the State of Hawaii, have established trademark rights at least under the laws of the State of Oregon and the State of Hawaii, prior to the acts alleged herein.

**THE ACCUSED PRODUCTS AND MARKS**

16. Upon information and belief, Defendant, acting on its own behalf and/or through an agent, operates a Website on the World Wide Web at <http://808hidr8.com/> (“Defendant’s Website”).

17. Upon information and belief, Defendant markets and sells vacuum insulated bottles and bottle lids.

18. Upon information and belief, Defendant uses Defendant’s Website to market and sell vacuum insulated bottles and lids.

19. Upon information and belief, Defendant promotes and claims that its vacuum insulated bottles and lids originate “from the same manufacturer of the other leading brand stainless steel water bottles” (the “Same Manufacturer Statement”). Attached as Exhibit R are examples of Defendant’s Same Manufacturer Statement in connection with Defendant and the vacuum insulated bottles and bottle lids it sells.

**The Accused Products**

20. Upon information and belief, Defendant markets and sells straw lids for vacuum insulated bottles (“Accused Straw Lids”). Attached as Exhibit S are excerpts from Defendant’s Website showing examples of the Accused Straw Lids being offered for sale.

21. Upon information and belief, Defendant also markets and sells the Accused Straw Lids in stores and/or marketplaces. Attached as Exhibit T are examples of the Accused Straw Lids being offered for sale in stores and marketplaces.

### **The Accused Marks**

22. Upon information and belief, Defendant markets, offers for sale, and/or sells products under a mark that includes the word “HI-DR8” with a palm tree shaped design in the place of the “I” in “HI-DR8” (the “HY-DR8 Mark”).

23. Upon information and belief, Defendant markets, offers for sale, and/or sells products under the mark HI-DR8 (“the HI-DR8 Mark”).

24. Upon information and belief, Defendant markets, offers for sale, and/or sells products under the mark Hi-DRO FLASK (the “Hi-DRO FLASK Mark”).

25. Upon information and belief, Defendant markets, offers for sale, and/or sells products listed as snap top lids (the “HI-DR8 Snap Lid”).

26. Upon information and belief, Defendant first began using the HY-DR8 Mark, HI-DR8 Mark, Hi-DRO FLASK Mark, and/or HI-DR8 Snap Lid (collectively the “Accused Marks”) on insulated bottles and lids on or around November 2014.

27. Attached as Exhibit U are examples of the Accused Marks being marketed and/or offered for sale on insulated bottles and lids.

28. Upon information and belief, Defendant promotes its goods in some of the same or similar channels, and to some of the same or similar consumers as does Hydro Flask.

29. Upon information and belief, Defendant is a direct competitor of Hydro Flask.

30. Attached as Exhibit V is a checkout page from Defendant’s Website showing that the insulated bottles and lids marked with the Accused Marks, and the Accused Straw Lids, are offered and available for sale to customers located in the State of Oregon.

**FIRST CAUSE OF ACTION – INFRINGEMENT OF THE ‘986 PATENT**

31. The allegations of the preceding paragraphs are hereby incorporated by reference in this section as though set forth fully herein.

32. Hydro Flask has never authorized Defendant to make, use, offer to sell, sell, and/or import into the United States products covered by the ‘986 patent (or Hydro Flask Straw Lid).

33. Upon information and belief, Defendant has infringed and is infringing the ‘986 patent by making, using, offering to sell, selling, and/or importing into the United States the Accused Straw Lids.

34. For example, at least the Accused Straw Lids described above and shown in Exhibit S infringe the ‘986 patent (or Hydro Flask Straw Lid).

35. Upon information and belief, infringement by Defendant has been and continues to be willful, with knowledge of the ‘986 patent and Defendant’s infringement thereof, entitling plaintiff to increased damages under 35 U.S.C. § 284 and to attorneys’ fees incurred in prosecuting this action under 35 U.S.C. § 285.

36. Upon information and belief, infringement by Defendant will continue unless enjoined by this court.

37. Hydro Flask has suffered, and will continue to suffer, substantial damages in an amount to be proven at trial, through lost profits, lost sales and/or lost royalties, due to infringement of the ‘986 patent by Defendant.

38. Hydro Flask has suffered, and will continue to suffer, permanent and irreparable injury, for which Hydro Flask has no adequate remedy at law.

39. Hydro Flask is entitled to relief as provided by 35 U.S.C. §§ 281, 283-285, and 289.

**SECOND CAUSE OF ACTION – VIOLATIONS OF THE LANHAM ACT: TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, AND FALSE DESIGNATION OF ORIGIN**

40. The allegations of the preceding paragraphs are hereby incorporated by reference in this section as though set forth fully herein.

41. Since 2011, Hydro Flask has advertised and promoted the sale of its insulated vacuum bottles and lids marked with the Hydro Flask Marks. Hydro Flask's goods bearing the Hydro Flask Marks have acquired an excellent reputation as well as celebrity by purchasers who recognize the distinctive marks.

42. Hydro Flask has used and continues to use the Hydro Flask Marks in commerce throughout the United States, including in Oregon and Hawaii.

43. Hydro Flask's use of the Hydro Flask Marks is distinctive for the goods bearing the Hydro Flask Marks.

44. Hydro Flask has never authorized Defendant to use the Hydro Flask Marks or any similar marks. Defendant has no license or authority from Hydro Flask permitting the use of the Hydro Flask Marks or any similar marks on insulated bottles or lids.

45. Notwithstanding Hydro Flask's established rights, Defendant markets, offers for sale, and/or sells products, including at least insulated bottles and lids, under confusingly similar marks to Hydro Flask's products bearing the Hydro Flask Marks.

46. Defendant currently markets, offers for sale, and/or sells products, including at least insulated bottles and lids, under the Accused Marks.

47. Upon information and belief, the Accused Marks are confusingly similar to the Hydro Flask Marks.



48. Upon information and belief, Defendant's Hi-DRO FLASK Mark is confusingly similar to Hydro Flask's Hydro Flask Marks. For example, "Hi-DRO FLASK" is confusingly similar to Hydro Flask's HYDRO FLASK mark because the marks look the same, sound the same, and have the same meaning or commercial impression.

49. Upon information and belief, Defendant's HY-DR8 Mark is confusingly similar to Hydro Flask's Hydro Flask Marks. For example, Defendant uses a palm tree which looks like a "Y" after the letter "H" in the HY-DR8 Mark, and makes it look confusingly similar to Hydro Flask's HYDRO FLASK mark. Moreover, the number "8" looks like an "O" in the term "HY-DR8" and makes the mark confusingly similar to Hydro Flask's HYDRO FLASK mark. The marks look the same, sound the same, and have the same meaning or commercial impression.

50. Upon information and belief, Defendant's HI-DR8 Mark is confusingly similar to Hydro Flask's Hydro Flask Marks. For example, the number "8" looks like an "O" in the term "HI-DR8" and makes the mark confusingly similar to Hydro Flask's HYDRO FLASK mark because the marks look the same, sound the same, and have the same meaning or commercial impression.

51. Upon information and belief, Defendant's HY-DR8 Mark and HI-DR8 Mark are confusingly similar to Hydro Flask's HYDRATE YOUR LIFE mark. For example, the term "HI-DR8" is confusingly similar to Hydro Flask's HYDRATE YOUR LIFE because the marks look the same, sound the same, and have the same meaning or commercial impression.

52. Upon information and belief, Defendant's HI-DR8 Snap Lid product configuration is confusingly similar to Hydro Flask's Hydro Flask Flip Lid product configuration. For example, Defendant's HI-DR8 Snap Lid has a rounded body and a flip-top

disposed on top of the rounded body, in the identical configuration as Hydro Flask's Hydro Flask Flip Lid product configuration.

53. Upon information and belief, Defendant first began using the Accused Marks on the insulated vacuum bottles and lids on or around November 2014.

54. Defendant is a direct competitor of Hydro Flask.

55. Upon information and belief, Defendant promotes its goods in some of the same or similar channels, and to some of the same or similar consumers as does Hydro Flask.

56. Hydro Flask has requested that Defendant cease and desist from its infringing actions that violate federal and state laws, but Defendant has not complied with this request.

57. Upon information and belief, Defendant has engaged in this infringing activity despite having actual knowledge of Hydro Flask's trademark rights in the Hydro Flask Marks.

58. Defendant's actions are likely to lead the public to conclude incorrectly that Defendant's goods originate with, are related to, or are authorized or sponsored by Hydro Flask, which will damage both Hydro Flask and the public.

59. Upon information and belief, Defendant's actions are intended to enrich Defendant.

60. Upon information and belief, Defendant has advertised and offered its goods for sale using the Accused Marks with the intention of misleading, deceiving, or confusing consumers as to the origin of its goods and of trading on Hydro Flask's reputation and goodwill.

61. Upon information and belief, Defendant's activities are likely to cause confusion and have caused confusion among Hydro Flask's customers and potential customers.

62. Defendant's unauthorized use of the Accused Marks in connection with the sale, offering for sale, distribution, and advertising of goods in U.S. commerce is likely to cause confusion, mistake, or deception.

63. Defendant's unauthorized use of the Accused Marks in interstate commerce as described above constitutes trademark infringement and unfair competition under 15 U.S.C. §§ 1114(1) and 1125(a) and is likely to cause consumer confusion, mistake, or deception.

64. Upon information and belief, Defendant distributed, advertised, and/or promoted its insulated vacuum bottles and lids claiming that the bottles and lids are "from the same manufacturer of the other leading brand stainless steel water bottles."

65. Upon information and belief, the manufacturer of Defendant's insulated vacuum bottles and lids is Zhejiang Unique Group Company, Limited of China.

66. Zhejiang Unique Group Company, Limited is not an authorized manufacturer or licensee of any product of Hydro Flask or in connection with the use of any mark of Hydro Flask.

67. Upon information and belief, Defendant's insulated vacuum bottles and lids are not from the same manufacturer.

68. Upon information and belief, Defendant's claim that its insulated vacuum bottles and lids are "from the same manufacturer of the other leading brand stainless steel water bottles" is likely to deceive, or cause confusion or mistake, as to the origin, sponsorship, or approval and misrepresents the nature, characteristics, and qualities of its insulated vacuum bottles and lids, in violation of 15 U.S.C. § 1125(a) or Section 43(a) of the Lanham Act.

69. Defendant's unauthorized marketing and sale of its goods in interstate commerce using the confusingly similar marks and the false and misleading statements constitutes a false

designation of origin or false representation that wrongfully and falsely designates Defendant's goods as originating from or connected with Hydro Flask, and constitutes the use of false descriptions or representations in interstate commerce in violation of 15 U.S.C. § 1125(a).

70. Upon information and belief, as a direct and proximate result of Defendant's trademark infringement and acts of unfair competition, Hydro Flask has suffered irreparable harm to its business and reputation, and also has suffered and continues to suffer damages in an amount to be determined by the trier of fact.

71. Upon information and belief, as a direct and proximate result of Defendant's trademark infringement and acts of unfair competition, Defendant has unjustly profited from those acts.

72. Upon information and belief, Defendant's trademark infringement and acts of unfair competition will cause further irreparable injury to Hydro Flask if Defendant is not restrained by this Court from further violation of Hydro Flask's rights.

73. Upon information and belief, Defendant's activities are deliberate and willful.

74. Hydro Flask has no adequate remedy at law.

75. The goodwill and reputation for quality that Hydro Flask has worked hard and long to cultivate has been threatened by Defendant's actions.

76. Unless Defendant is enjoined from the use of the Accused Marks and Same Manufacturer Statement in connection with the insulated bottles, bottle lids and other goods, such use will continue to cause consumer confusion and will continue to cause irreparable harm to Hydro Flask and the public.

**THIRD CAUSE OF ACTION – COMMON LAW TRADEMARK INFRINGEMENT  
AND UNFAIR COMPETITION**

77. The allegations of the preceding paragraphs are hereby incorporated by reference in this section as though set forth fully herein.

78. Defendant, by the acts complained of herein, has infringed Hydro Flask's trademark rights in the Hydro Flask Marks by marking Defendant's products under confusingly similar marks.

79. Defendant has competed unfairly with Hydro Flask and has otherwise used the reputation and goodwill of Hydro Flask to offer and sell Defendant's goods as if they were sponsored, approved by, or connected with Hydro Flask.

80. Defendant's use of the Accused Marks on Defendant's goods constitutes unfair competition and trademark infringement under the laws of Oregon, Hawaii and other States.

81. Defendant's claim that its vacuum insulated bottles and lids originate "from the same manufacturer of the other leading brand stainless steel water bottles" constitutes unfair competition under the laws of Oregon, Hawaii and other States.

**PRAYER FOR RELIEF**

In view of the foregoing, Plaintiff Hydro Flask prays for judgment as follows:

**First Cause of Action**

A. That Defendant has infringed, and is infringing, the '986 patent in violation of 35 U.S.C. § 271,

B. That Defendant's infringement of the '986 patent is willful,

C. That Defendant be preliminarily and permanently enjoined against all acts of infringement of the '986 patent pursuant to 35 U.S.C. § 283,

D. That Defendant be required to file with this Court, within thirty (30) days after entry of final judgment, a written statement under oath setting forth in detail the manner in which Defendant has complied with the injunction of paragraph C,

E. That Defendant be required to deliver to Hydro Flask for destruction any and all articles in its possession and/or under its control that infringe the '986 patent, including, but not limited to, the Accused Straw Lids,

F. That Defendant be ordered to pay Hydro Flask the damages that Hydro Flask has suffered due to infringement of the '986 patent by Defendant, together with interest thereon and costs pursuant to 35 U.S.C. § 284, including profits lost by plaintiffs as a result of infringement of the '986 patent; in any event Hydro Flask shall be awarded no less than a reasonable royalty for the unauthorized sale of the infringing products by Defendant,

G. That Defendant additionally be ordered to pay Hydro Flask the total profits obtained by Defendant from sales of the infringing goods, per 35 U.S.C. § 289, and

H. That this case be declared exceptional pursuant to 35 U.S.C. § 285, and that Hydro Flask be awarded trebled damages and reasonable attorneys' fees; and

I. That, in any event, Hydro Flask be awarded such other and further relief as the Court deems just and proper.

Second and Third Causes of Action

J. That Hydro Flask's Hydro Flask Marks has been and continues to be infringed by Defendant in violation of 15 U.S.C. §§ 1114(1) and 1125(a),

K. That Defendant's use of the Accused Marks constitutes unfair competition and a false designation of origin in violation of 15 U.S.C. § 1125(a),

L. That Defendant's claim that its vacuum insulated bottles and bottle lids originate "from the same manufacturer of the other leading brand stainless steel water bottles" constitutes unfair competition and a false designation of origin in violation of 15 U.S.C. § 1125(a),

M. That Defendant's use of the Accused Marks violates Oregon, Hawaii, and other State' common law regarding trademark infringement and unfair competition,

N. That Defendant's claim that its vacuum insulated bottles and bottle lids originate "from the same manufacturer of the other leading brand stainless steel water bottles" violates Oregon, Hawaii, and other States' common law regarding trademark infringement and unfair competition,

O. That, pursuant to Rule 65 of the Federal Rules of Civil Procedure and 15 U.S.C. § 1116, Defendant, its officers, agents, servants, employees, attorneys, successors, and/or assigns, and all other persons in active concert or participation with any of them be preliminarily and permanently enjoined from (1) marking insulated bottles and lids with the Accused Marks, (2) claiming that its insulated bottles and lids originate "from the same manufacturer of the other leading brand stainless steel water bottles," or making similar claims, and (3) continuing any and all acts of unfair competition as herein alleged,

P. That Defendant be ordered pursuant to Rule 65 of the Federal Rules of Civil Procedure and 15 U.S.C. § 1118, to recall from all retailers and distributors and to deliver up for impounding all goods, materials, and advertisements improperly bearing the Accused Marks or Same Manufacturer Statements,

Q. That Defendant be required to file with this Court, within thirty (30) days after entry of final judgment, a written statement under oath setting forth in detail the manner in which Defendant has complied with any injunction imposed,

